

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**BEFORE THE FOREST PRACTICES APPEALS BOARD  
STATE OF WASHINGTON**

<b>DARYL STAPLES,</b>	)	
	)	<b>FPAB NO. 94-22</b>
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>FINAL FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW</b>
<b>STATE OF WASHINGTON,</b>	)	<b>AND ORDER</b>
<b>DEPARTMENT OF NATURAL</b>	)	
<b>RESOURCES,</b>	)	
	)	
<b>Respondent.</b>	)	

This matter came on before the Honorable William A. Harrison, Administrative Appeals Judge, presiding, on August 29, 1994, in Lacey, Washington

This matter is the appeal of an \$875 civil penalty for alleged unlawful yarding of logs across a stream.

Appearances were as follows:

1. Daryl Staples, , appellant, appeared pro se.
2. John E. Justice, Assistant Attorney General, appeared for the State Department of Natural Resources.

Gene Barker and Associates, Olympia, Washington, provided court reporting services.

Witnesses were sworn and testified. Exhibits were examined. Board Members, Norman L. Winn, Chair; Dr. Martin R. Kaatz, and Robert E. Quoidbach, have reviewed the record. From testimony heard and exhibits examined, the Forest Practices Appeals Board makes these

**FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
FPAB NO. 94-22**

(1)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

## FINDINGS OF FACT

### I

This matter arises in Cowlitz County. It concerns the assessment of a civil penalty against the sub-contractor of a forest practices operator. The sub-contractor in this instance was in physical control of the logging equipment during the incident in question.

### II

On April 14, 1993, respondent Department of Natural Resources (DNR) approved a forest practices application for the harvesting of 20 acres belonging to Robert D. Costello of Kelso, Washington. Mr. Costello, in turn, engaged Global Pacific Forest Products, Inc. as his forest practices operator. The approved application stated expressly that a Type 3 stream was present on the logging site. The application also required expressly, "Yard timber away from Type 3 water". (Exhibit A attached to the application.)

### III

Global Pacific, Inc. sub-contracted the yarding work at the site to A-1 Stumpmakers, Inc. of Lyle, Washington. Global directed A-1's yarding operator, appellant Daryl Staples, to yard timber across the Type 3 stream. Appellant did not ask Global for a copy of the approved forest practices application. He proceeded to do what he was told. Appellant testified to Global's good reputation and his reluctance to question the propriety of his task because of a desire to stay on good terms with Global.

1  
2 IV

3 Global has a record of prior forest practice penalties Official notice is taken of the  
4 matter of Global Pacific Forest Products v Natural Resources, FPAB No 93-73 (1993)  
5 Appellant has no prior record of any forest practices penalty.

6 V

7 Appellant's action caused material damage to the streamside riparian management zone.  
8 This occurred when yarded logs removed limbs from trees within the zone. That resulted in  
9 lesser shade and correspondingly higher temperatures in the stream Higher temperatures are  
10 adverse to fish life. There was no Hydraulics Project Approval either sought or obtained in  
11 this instance.  
12

13 VI

14 The DNR assessed civil penalties of \$875 each against Global Pacific and the appellant.  
15 Global paid its penalty. Appellant now appeals. The penalty was assessed for violation of the  
16 following two provisions of the forest practices regulations:  
17

18 *WAC 222-20-060 Deviation from prior application or*  
19 *notification: Substantial deviation from a notification or an*  
20 *approved application requires a revised notification or*  
21 *application. Other deviations may be authorized by a*  
22 *supplemental directive, notice to comply or stop work order The*  
23 *department shall notify the departments of fisheries, wildlife and*  
24 *ecology and affected Indian tribes and the appropriate county of*  
25 *any supplemental directive, notice to comply or stop work order*  
26 *involving a deviation from a prior notification or approved*  
27 *application, except where such notice has been waived.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7

*\*(1) Type 1, 2 and 3 Waters. No timber shall be cable yarded in or across a Type 1, 2 or 3 Waters except where the logs will not materially damage the bed of waters, banks or riparian management zones and removals from Type 1, 2 or 3 Water have hydraulic project approval of the departments of fisheries or wildlife.*

## VII

The DNR computed the \$875 civil penalty amount by assigning the base penalty of \$500 for deviating from a forest practices application (WAC 222-20-060) and adding \$375 for yarding through a Type 3 water (WAC 222-30-060(1)). The latter regulation carries a base penalty of \$250 which was upgraded for prior knowledge. Appellant is an experienced logging contractor. The penalty was not upgraded for damage to a public resource, but could have been.

## VIII

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board issues these:

### CONCLUSIONS OF LAW

# I

Appellant contends that he should not be liable for a civil penalty because he is not the forest practices operator. While it is true that appellant is a sub-contractor, this does not insulate him from civil penalties. The Forest Practices Act provides, in this regard,

*Every person who fails to comply with any provision of RCW 76.09.010 through 76.09.280 as now or hereafter amended or of the forest practices regulations shall be subject to a penalty in an amount of not more than five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense.*

As can be seen from this language, one who physically controls logging equipment as a sub-contractor is subject to penalty for violating forest practices regulations, no less than the contractor-operator to whom he sub-contracts. Civil penalties may be assessed to “Every person...who fails to comply...”. Appellant has failed to comply with the cited forest practices regulations, and is liable for civil penalty.

## II

The amount of appellant's penalty is identical to that assessed against the operator, Global Pacific. Because Global has a record of prior violations, while the appellant does not, the amount of appellant's penalty should be mitigated. A reasonable mitigation in the circumstances would be to abate the \$875 civil penalty to \$750.

### III

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.


From the foregoing, the Board issues this:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**ORDER**

The violations of forest practices regulations cited against appellant are affirmed. The civil penalty is abated to \$750.


Done at Lacey, Washington, this 20<sup>th</sup> day of September, 1994.



HONORABLE WILLIAM A. HARRISON  
Administrative Appeals Judge

**FOREST PRACTICES APPEALS BOARD**

  
NORMAN L. WINN, Chairman

  
DR. MARTIN R. KAATZ, Member

  
ROBERT E. QUOIDBACH, Member

F94-22F

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**BEFORE THE FOREST PRACTICES APPEALS BOARD  
STATE OF WASHINGTON**

<b>DARYL STAPLES,</b>	)	
	)	<b>FPAB NO. 94-22</b>
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>FINAL FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW</b>
<b>STATE OF WASHINGTON,</b>	)	<b>AND ORDER</b>
<b>DEPARTMENT OF NATURAL</b>	)	
<b>RESOURCES,</b>	)	
	)	
<b>Respondent.</b>	)	

This matter came on before the Honorable William A Harrison, Administrative Appeals Judge, presiding, on August 29, 1994, in Lacey, Washington

This matter is the appeal of an \$875 civil penalty for alleged unlawful yarding of logs across a stream

Appearances were as follows

1. Daryl Staples, , appellant, appeared pro se.
2. John E. Justice, Assistant Attorney General, appeared for the State Department of Natural Resources

Gene Barker and Associates, Olympia, Washington, provided court reporting services

Witnesses were sworn and testified Exhibits were examined Board Members, Norman L. Winn, Chair; Dr Martin R Kaatz, and Robert E Quoidbach, have reviewed the record. From testimony heard and exhibits examined, the Forest Practices Appeals Board makes these

**FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
FPAB NO. 94-22**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

## FINDINGS OF FACT

### I

This matter arises in Cowlitz County. It concerns the assessment of a civil penalty against the sub-contractor of a forest practices operator. The sub-contractor in this instance was in physical control of the logging equipment during the incident in question.

### II

On April 14, 1993, respondent Department of Natural Resources (DNR) approved a forest practices application for the harvesting of 20 acres belonging to Robert D. Costello of Kelso, Washington. Mr. Costello, in turn, engaged Global Pacific Forest Products, Inc. as his forest practices operator. The approved application stated expressly that a Type 3 stream was present on the logging site. The application also required expressly, "Yard timber away from Type 3 water". (Exhibit A attached to the application.)

### III

Global Pacific, Inc. sub-contracted the yarding work at the site to A-1 Stumpmakers, Inc. of Lyle, Washington. Global directed A-1's yarding operator, appellant Daryl Staples, to yard timber across the Type 3 stream. Appellant did not ask Global for a copy of the approved forest practices application. He proceeded to do what he was told. Appellant testified to Global's good reputation and his reluctance to question the propriety of his task because of a desire to stay on good terms with Global.



1  
2 IV

3 Global has a record of prior forest practice penalties. Official notice is taken of the  
4 matter of Global Pacific Forest Products v Natural Resources, FPAB No. 93-73 (1993).

5 Appellant has no prior record of any forest practices penalty

6 V

7 Appellant's action caused material damage to the streamside riparian management zone  
8 This occurred when yarded logs removed limbs from trees within the zone That resulted in  
9 lesser shade and correspondingly higher temperatures in the stream Higher temperatures are  
10 adverse to fish life. There was no Hydraulics Project Approval either sought or obtained in  
11 this instance  
12

13 VI

14 The DNR assessed civil penalties of \$875 each against Global Pacific and the appellant  
15 Global paid its penalty. Appellant now appeals. The penalty was assessed for violation of the  
16 following two provisions of the forest practices regulations  
17

18 *WAC 222-20-060 Deviation from prior application or*  
19 *notification: Substantial deviation from a notification or an*  
20 *approved application requires a revised notification or*  
21 *application. Other deviations may be authorized by a*  
22 *supplemental directive, notice to comply or stop work order The*  
23 *department shall notify the departments of fisheries, wildlife and*  
24 *ecology and affected Indian tribes and the appropriate county of*  
25 *any supplemental directive, notice to comply or stop work order*  
26 *involving a deviation from a prior notification or approved*  
27 *application, except where such notice has been waived*

*\*(1) Type 1,2 and 3 Waters No number shall be cable yarded in or across a Type 1, 2 or 3 Waters except where the logs will not materially damage the bed of waters, banks or riparian management zones and removals from Type 1, 2 or 3 Water have hydraulic project approval of the departments of fisheries or wildlife.*

The DNR computed the \$875 civil penalty amount by assigning the base penalty of \$500 for deviating from a forest practices application (WAC 222-20-060) and adding \$375 for yarding through a Type 3 water (WAC 222-30-060(1)). The latter regulation carries a base penalty of \$250 which was upgraded for prior knowledge. Appellant is an experienced logging contractor. The penalty was not upgraded for damage to a public resource, but could have been.

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such

From these Findings of Fact, the Board issues these:

# I

Appellant contends that he should not be liable for a civil penalty because he is not the forest practices operator. While it is true that appellant is a sub-contractor, this does not insulate him from civil penalties. The Forest Practices Act provides, in this regard

*Every person who fails to comply with any provision of RCW 76.09.010 through 76.09.280 as now or hereafter amended or of the forest practices regulations shall be subject to a penalty in an amount of not more than five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense.*

As can be seen from this language, one who physically controls logging equipment as a sub-contractor is subject to penalty for violating forest practices regulations, no less than the contractor-operator to whom he sub-contracts. Civil penalties may be assessed to "Every person...who fails to comply . " Appellant has failed to comply with the cited forest practices regulations, and is liable for civil penalty.

## II

The amount of appellant's penalty is identical to that assessed against the operator, Global Pacific. Because Global has a record of prior violations, while the appellant does not, the amount of appellant's penalty should be mitigated. A reasonable mitigation in the circumstances would be to abate the \$875 civil penalty to \$750.

## III

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such

From the foregoing, the Board issues this:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**ORDER**

The violations of forest practices regulations cited against appellant are affirmed. The civil penalty is abated to \$750.

Done at Lacey, Washington, this 20<sup>th</sup> day of September, 1994

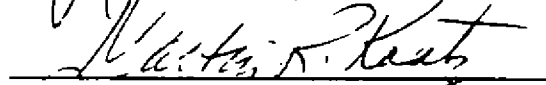


HONORABLE WILLIAM A. HARRISON  
Administrative Appeals Judge

**FOREST PRACTICES APPEALS BOARD**



NORMAN L. WINN, Chairman



DR MARTIN R. KAATZ, Member



ROBERT E. QUOIDBACH, Member

F94-22F